

fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

(d) Duration of contract

Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this chapter applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 351 of this title no less often than once every two years during the term of the contract, covering the various classes of service employees.

(Pub. L. 89-286, § 4, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92-473, § 3, Oct. 9, 1972, 86 Stat. 789.)

AMENDMENTS

1972—Subsec. (b). Pub. L. 92-473, § 3(a), excluded section 358 of this title from being subject to Secretary's authority to provide limitations and to make regulations respecting application of provisions of this chapter, substituted "but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper" for "as he may find necessary and proper", and authorized administrative action in accord with the remedial purpose of this chapter to protect prevailing labor standards.

Subsecs. (c), (d). Pub. L. 92-473, § 3(b), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 352 of this title.

§ 354. List of violators; prohibition of contract award to firms appearing on list; actions to recover underpayments; payment of sums recovered

(a) The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this chapter. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this chapter, forward to the Comptroller General the name of the individual or

firm found to have violated the provisions of this chapter.

(b) If the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within three years shall be covered into the Treasury of the United States as miscellaneous receipts.

(Pub. L. 89-286, § 5, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 92-473, § 4, Oct. 9, 1972, 86 Stat. 790.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92-473 authorized award of contracts to violators because of unusual circumstances and required the Secretary to forward names of violators to Comptroller General within ninety days of hearing examiner's finding of a violation where the Secretary does not recommend awards because of unusual circumstances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 351 of this title.

§ 355. Exclusion of fringe benefit payments in determining overtime pay

In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act [29 U.S.C. 201 et seq.] by provisions of section 7(d) thereof [29 U.S.C. 207(d)].

(Pub. L. 89-286, § 6, Oct. 22, 1965, 79 Stat. 1035.)

REFERENCES IN TEXT

The Fair Labor Standards Act, referred to in text, is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, known as the Fair Labor Standards Act of 1938, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§ 356. Exemptions

This chapter shall not apply to—

(1) any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act [41 U.S.C. 35 et seq.];

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.];

(5) any contract for public utility services, including electric light and power, water, steam, and gas;

(6) any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) any contract with the United States Postal Service, the principal purpose of which is the operation of postal contract stations.

(Pub. L. 89-286, §7, Oct. 22, 1965, 79 Stat. 1035; Pub. L. 91-375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783.)

REFERENCES IN TEXT

The Walsh-Healey Public Contracts Act, referred to in par. (2), probably means act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, known as the Walsh-Healey Act, which is classified generally to sections 35 to 45 of this title. For complete classification of this Act to the Code, see Short Title note under section 35 of this title and Tables. See also section 262 of Title 29, Labor.

The Communications Act of 1934, as amended, referred to in par. (4), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

CHANGE OF NAME

In par. (7), “United States Postal Service” substituted for “Post Office Department” pursuant to Pub. L. 91-375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783, which are set out as notes preceding section 101 of Title 39, Postal Service, and under section 201 of Title 39, respectively, which abolished Post Office Department, transferred its functions to United States Postal Service, and provided that references in other laws to Post Office Department shall be considered a reference to United States Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 357 of this title.

§ 357. Definitions

For the purposes of this chapter—

(a) “Secretary” means Secretary of Labor.

(b) The term “service employee” means any person engaged in the performance of a contract entered into by the United States and not exempted under section 356 of this title, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(c) The term “compensation” means any of the payments or fringe benefits described in section 351 of this title.

(d) The term “United States” when used in a geographical sense shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa,

Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

(Pub. L. 89-286, §8, Oct. 22, 1965, 79 Stat. 1036; Pub. L. 93-57, §1, July 6, 1973, 87 Stat. 140; Pub. L. 94-489, §3, Oct. 13, 1976, 90 Stat. 2358.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (d), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-489 substituted provision defining service employees to include all employees, but excluding bona fide executive, administrative, and professional employees, for provision defining service employees as guards, watchmen, any person engaged in a recognized trade or craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement.

1973—Subsec. (d). Pub. L. 93-57 defined “United States” to include Canton Island.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93-57 provided that: “The amendment made hereby [amending this section] shall be effective with respect to all contracts entered into at any time after the date of enactment [July 6, 1973].”

§ 358. Wage and fringe benefit determinations of Secretary

It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 351¹ of this title should be made with respect to all contracts subject to this chapter, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this chapter which are entered into during the applicable fiscal year:

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June 30, 1974, all contracts, under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

(5) On or after July 1, 1976, all contracts under which more than five service employees are to be employed.

(Pub. L. 89-286, §10, as added Pub. L. 92-473, §5, Oct. 9, 1972, 86 Stat. 790; amended Pub. L. 94-273, §29, Apr. 21, 1976, 90 Stat. 380.)

¹ So in original. Probably should be section “351(a)”.